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In the Supreme Court of the United States

OCTOBER TERM, 1955

RICHFIELD OIL CORPORATION, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

GREGORY A. HARRISON
HOWARD J. FINN
MOSES LASKY
MARION B. PLANT
ALVIN J. ROCKWELL
111 Sutter Street,
San Francisco 4, California
DAVID GUNTERT
555 South Flower Street,
Los Angeles, California
Attorneys for Petitioner.

BROBECK, PHLEGER & HARRISON
111 Sutter Street,
San Francisco 4, California
Of Counsel.

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO 5

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RICHFIELD OIL CORPORATION, a corporation,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

Richfield Oil Corporation prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on January 16, 1956, and to review the decree entered on February 8, 1956 enforcing the order of the National Labor Relations Board.

OPINIONS BELOW

The opinion of the Court of Appeals (Tr. 156; dissenting opinion, Tr. 171) is reported in 29 LAB. CAS. (CCH) ¶ 69,690, and 37 LAB. REL. REP. (Ref. Man.) 2327. The opinion of the National Labor Relations Board (Tr. 118; dissenting opinion, Tr. 136) is reported in 110 N.L.R.B. 356, CCH LAB. LAW REP. (4th ed.) ¶ 52,345, and 34 LAB. REL. REP. (Ref. Man.) 1658.

Note: All emphasis in quotations is added.

JURISDICTION

There are two judgments for review: the first, entered January 16, 1956, denied the petition to review the Board's order (Tr. 172); the second, entered February 8, 1956, decreed enforcement of the Board's order (Tr. 173).[1] The Board had jurisdiction under § 10 of the National Labor Relations Act, 29 U.S.C. § 160, which also gave the Court of Appeals jurisdiction on review. Jurisdiction to review the judgment and the decree on certiorari is conferred by 28 U.S.C. § 1254(1). This petition is timely. 28 U.S.C. § 2101(c).

QUESTION PRESENTED

The question is whether the National Labor Relations Act confers on collective bargaining representatives the right to represent employees concerning investment in corporate shares of their employer, and whether the corporate employer must enter into collective bargaining with such a representative concerning the terms and conditions under which the employees must, or may be entitled to, purchase and acquire the voting shares of the employer.

STATUTES INVOLVED

The statutes involved, being lengthy, are set out in Appendix A. They are these:

Labor Management Relations Act, June 23, 1947, c. 120, § 1, 61 STAT. 136, 29 U.S.C. § 141;

National Labor Relations Act, July 5, 1935, c. 372, 49 STAT. 449; June 23, 1947, c. 120, Title I, 61 STAT. 136, as amended, 29 U.S.C. §§ 151 *et seq.*:

§ 1, 29 U.S.C.;

§ 151;

§ 2(3), 29 U.S.C. § 152(3);

§ 2(11), 29 U.S.C. § 152(11);

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1. Execution and enforcement of the decree were stayed to permit this petition to be filed. 28 U.S.C. § 2101(f); Tr. 176.

§ 7, 29 U.S.C. § 157;
§ 8 (a,d), 29 U.S.C. § 158 (a,d);
§ 9(a), 29 U.S.C. § 159(a);
§ 14(a), 29 U.S.C. § 164(a).

STATEMENT OF THE CASE

Richfield Oil Corporation, a company engaged in the production, refining and sale of petroleum products (Tr. 8-9), published on April 14, 1953 and placed in effect a stock investment plan for employees (Tr. 12, 81, 83 *et seq.*). Participation by employees is voluntary. It is limited to employees between specified age limits and with at least one year of employment. Each participating employee makes monthly payments, not exceeding 5% of his earnings, to a trustee for the purchase of voting shares of Richfield's stock. If the participant maintains continuous membership in the investment plan until termination of employment, he is entitled not only to shares purchased with his earnings, but additional shares purchased monthly with contributions made by Richfield for that purpose (Tr. 84, 85, 88-89).

This plan was published and put in effect by Richfield without presenting it to any labor organization representing the company's employees (Tr. 12).

Oil Workers International Union, one of eleven unions representing Richfield employees (Tr. 9-10), demanded changes in the stock investment plan, including changes concerning the exercise of voting rights incident thereto (Tr. 13, 104, 106); and when Richfield refused, on the ground that stock ownership and the right to acquire stock of the employer are not matters on which a duty to bargain exists, proceedings before the Board ensued (Tr. 2). The proceedings culminated in the Board's order, concurred in by three members (one dissenting, one not voting), ordering the company to bargain with the union respecting the subject matter of the stock purchase plan (Tr. 134).

On petition for review and cross petition for enforcement, brought under § 10 of the Act, 29 U.S.C. § 160, the Court of Appeals for the District of Columbia Circuit, by a two-to-one decision, upheld the Board and decreed enforcement of its order (Tr. 172, 173).

The single, central and essential fact in the case is the establishment by Richfield of a plan for employees to invest in shares of its capital stock, through monthly contributions to a trustee, and thereby become entitled, in addition to the shares so purchased, to shares purchased by the company, if participants maintain their contributions and investments continuously until termination of employment.

The Court of Appeals, saying that something more is involved than an investment by employees, refers to the limitation of the company's offer to employees with at least one year of employment, and within prescribed age limits, and to the provisions which limit contributions to 5% of earnings with a minimum of $5.00 monthly (Tr. 160). But these provisions are no more than rules of eligibility to become investors in Richfield shares under the plan.

The Court also mentions contributions by Richfield, equalling 50% of each employee's payments, with additional contributions not exceeding 25% thereof, for the acquisition by the trustee of additional shares of its corporate stock (Tr. 160-61). But company contributions are not paid to employees, and are neither made in return for, or measured by, service performed. Company payments to the plan are used by the trustee only to invest in Richfield stock, to be delivered to participants if they maintain their own investments until termination of their employment (Tr. 86, 88). This feature merely enlarges the investment of the participants in Richfield's shares, as a premium for their own investment in company shares for the full period of employment. None of the shares received by any employee are compensation for service, none are measured thereby.

It is true, as the Court of Appeals has said (Tr. 161), that the plan provides for continuance of membership in the plan during leaves of absence approved by the company, and that members may continue as such during periods of layoffs which are not considered termination of employment under company policy; but these also are simply rules enlarging the permissible limits of participation and investment in the plan.[2]

Whenever the plan speaks of employees, the termination of their employment, their ages or their continuous service, it does so only in terms of eligibility to participate in the stock investment plan, never to regulate or affect compensation for work or tenure of employment.

This is the plan which the Board and the Court of Appeals have found to be a subject upon which the company must bargain. Its sole subject is the acquisition of shares representing corporate ownership; it is a promise to reward a continuous investment in the company's stock with bonus shares to be delivered to participants when their service with the company is ended. But it does not govern or affect the length of employees' service, the nature or character of their work, the compensation to be paid therefor, or any condition surrounding or attaching to their service in Richfield's employ.

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2. The opinion below incorrectly states (Tr. 162) that "continuity" of service under the plan means that an employee is entitled to receive an emolument of from 50% to 75% of his contributions depending on the company's earnings. *In the first place,* "service", as used in the plan's provision, merely defines eligibility to continue as a member of the plan (Tr. 84-85, 88), and an employee's "service" does not confer any right to a single share of stock or a single dollar of company money contributed under the plan; *second,* a participant's right to receive shares bought with company payments matures only if his investment in Richfield shares is maintained monthly continuously until termination of employment (Tr. 89); and the shares purchased with company funds, when received, are measured solely by employees' investments voluntarily made by them. The delivery of shares to employee participants on termination of employment depends also on the company voluntarily maintaining the plan (Tr. 92).

REASONS FOR GRANTING THE WRIT

1. The Decision Conflicts With That of the Ninth Circuit in the Retail Clerks' Case

The Board's decision concedes that the Act does not require bargaining concerning the rights of stockholders (Tr. 130-31), admitting that that at least is an area into which a labor organization is forbidden to intrude; and the Court below agrees (Tr. 165). Yet the decision requires collective bargaining on acquisition of ownership through stock purchase. That is to say, it denies a duty to bargain with unions concerning the rights of employees *as stockholders* but upholds the union's right to bargain on rights of employees *to become stockholders.*

In so holding, the decision conflicts with that of the Court of Appeals for the Ninth Circuit in *Labor Board v. Retail Clerks Int'l Ass'n,* 203 F.2d 165, on rehearing, 211 F.2d 759, cert. denied 348 U.S. 839. There, a union representing grocery clerks, lacking a right under the law to bargain on behalf of employees who *were supervisors,*[3] or *concerning the rights of supervisors,* was held in contempt for attempting to bargain for rank-and-file employees on their *right to become supervisors* by preference in promotion.

The court said (203 F.2d at 169),

> It will not do to say that the demands made were solely in the interests of the clerks in the appropriate bargaining unit. The effect of our decree was to prohibit all attempts of respondents to exact concessions from Safeway as to supervisory employees as the price of reaching an agreement as to the terms and conditions of employment of clerks.

On rehearing, the court adhered to its contempt judgment (one judge dissenting), saying (211 F.2d at 765):

> As we previously said, it will not do to say that the demands were made solely in the interests of the clerks. It

3. National Labor Relations Act §§ 2(3), 9(a), Appendix A. pp. 3, 5.

> is apparent that a union acting in the interests of its own members could undertake to meddle in matters properly belonging to management in a multitude of ways; but the fact that the union is doing so in its own interest does not excuse it * * *

If it be the law, as held by the Ninth Circuit, that it is not proper to bargain on *becoming supervisors* because to bargain *for supervisors* is prohibited, then it must likewise be the law that the admitted disability of labor organizations to bargain *on behalf of stockholders* includes a prohibition against bargaining on employees' *becoming stockholders.*[4]

2. The Decision Conflicts With Those of the Fifth Circuit in the Bemis Bros. and Hughes Tool Cases

The Court below holds that §§ 9(a) and 8(d) of the Act, which define the extent of exclusive representation and the duty of collective bargaining, confer upon the Board power to "spell out" for itself the meaning of "wages" and "conditions of employment" and thereby determine what subjects are bargainable (Tr. 166, 169). Its opinion states that there is nothing in the Act which forbids collective bargaining on a stock purchase plan,[5] and that Congress intended the Board itself to exercise its own competence and *"expertise"* in determining whether or not a particular subject falls within the mandatory bargaining requirements of the law (Tr. 166, 169).

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4. The Board's order also conflicts on this point with its own decision in *Capitol Smoked Fish Corp.*, 107 N.L.R.B. 752, where the Board held that a contract to acquire corporate stock is not a matter on which the Act makes bargaining necessary, even where, as in that case, the agreement was in form one of employment and provided for weekly wages for services rendered. In contrast to that decision, the Board's order here, upheld and enforced by the Court of Appeals, requires bargaining concerning a stock purchase plan which does not even purport to affect employment or earnings in any respect.

5. It should be noted that the question involved is not what is *forbidden* by the Act but what is *commanded.*

Other Circuits, however, have relied upon the words of the Act itself as defining the scope and limits of the bargaining duty. Thus, in *Labor Board v. Bemis Bros. Bag Co.*, 206 F.2d 33, the Fifth Circuit held explicitly that the duty to bargain is an obligation found in the plain language of the Act and that only matters which flow directly from the employment relationship and enter into the employment contract are subjects for statutory bargaining. And so, an offer by an employer to lease company-owned living accommodations was held nonbargainable, because not constituting a wage or condition of employment, even though it was made exclusively to employees, the term of the lease was coextensive with that of the employment, and rentals, under the leases involved, were payable by wage deductions. The Court said (p. 37) that the language of the Act

> clearly contemplates matters and things which arise out of, and may properly be considered a part of, the employment relation,—the business in which the employer and the employee participate as *necessary and essential* components in the furtherance of the enterprise.

The Court also said (p. 37),

> It is true, of course, that living standards and conditions may well be said to have a direct connection with a person's well being and efficiency, but this does not establish that an employee's living expenses or means of residence are conditions of employment.

The present decision is in flat conflict with *Bemis*, for if the right to occupy employer-provided living accommodations, limited to employees, dependent upon continuance of the employment relationship, and with provision made (although not used) for wage deductions, is not a condition of employment, then certainly it is not a condition of employment to offer employees the opportunity to invest in the employer's stock. The conflict arises from a fundamental and important difference concerning the require-

ments of the law: the test applied by the Fifth (and other Circuits) is whether the Act itself embraces the subject-matter in the definition of the bargaining duty; instead the Court below leaves it to the Board itself to define the bargaining duty in terms of what the Board believes will promote the purposes of the legislation.

The decision also conflicts with another Fifth Circuit case. As before stated, the Richfield plan, in common with other stock purchase plans, has to do solely with disposition of wages earned and payable, and nothing to do with what the pay for work to be performed shall be. Under the plan, an employee may choose to have his wages paid to him, or may elect to have them applied in part to purchase of stock. Similarly, an employee may elect to have a part of his wages applied to payment of his union dues. In *Hughes Tool Co. v. National Labor Relations Board,* 147 F.2d 69, 74-75, the dues checkoff was held to be nonbargainable. The Fifth Circuit there said,

> The collection of dues by a union from its members is not in its nature a matter for collective bargaining, which by the Act is limited to agreeing with the employer on rates of pay, wages, hours of employment, and other conditions of employment * * *
>
> * * * * * * *
>
> The wages of the members of other unions are their property. If they see fit to request their employer to pay their dues, out of their wages, and the employer is willing to do so, no unfair labor practice is done * * *

3. The Decision Is Contrary in Essential Principle Even to the Cases Enforcing Bargaining Orders

The cases enforcing Board decisions requiring collective bargaining have been based upon §§ 8(d) and 9(a) and have held bargaining mandatory only because the matters involved were compensation for services (and therefore "wages"), or affected

hiring, work or tenure (and were therefore "conditions of employment").

Thus, in *Labor Board v. Niles-Bement-Pond Co.*, 199 F.2d 713, in enforcing an order to bargain concerning Christmas bonuses, the Second Circuit said (p. 714),

> * * * decision turns upon whether their payment is so related to rates of pay, wages, hours or conditions of employment, that they fall within one or more of the statutory terms just mentioned.

In *Labor Board v. J. H. Allison Co.*, 165 F.2d 766, the Sixth Circuit held an employer must bargain concerning "merit wage increases" solely because they are related to "rates of pay". And in *W. W. Cross & Co. v. Labor Board*, 174 F.2d 875, involving bargaining on a group health and accident insurance program, the First Circuit stated the question thus (p. 877):

> The question then is whether a group health and accident insurance program is a subject matter included within the meaning of the words of the statute which we have italicized ["rates of pay, wages, hours of employment, or other conditions of employment."]

And it held that "wages", as a matter of legal interpretation of the Act, includes only "direct and immediate economic benefits flowing from the employment relationship" (p. 878).

Other Circuits also have treated the bargaining duty as dependent upon whether the subject was included within the statutory language as a matter of law. See *Labor Board v. George P. Pilling & Son Co.*, 119 F.2d 32, 38 (3d Cir.); *Wilson & Co. v. Labor Board*, 115 F.2d 759, 763-64 (8th Cir.); *Labor Board v. Andrew Jergens Co.*, 175 F.2d 130, 133 (9th Cir.).

Even in *Inland Steel Co. v. Labor Board*, 170 F.2d 247, cert. denied, 336 U.S. 960, which has been thought to go as far as any case in enforcing a broadened duty of collective bargaining, the Seventh Circuit felt compelled to conclude that the pension plan

there involved constituted "wages" and "conditions of employment" in an accepted legal sense in order to be bargainable.[6] Thus it said (170 F.2d at 253):

> Every day that such an employee worked his financial status would be enhanced to the extent that his pension benefits increased, and his *labor* would be performed under a pledge from the company that certain specified monetary benefits would be his upon reaching the designated age. It surely cannot be seriously disputed but that such a pledge on the part of the company forms a part of the consideration for work performed * * *

And as to "conditions of employment" it said (170 F.2d at 252):

> We are unable to differentiate between the conceded right of a Union to bargain concerning a discharge, and particularly a nondiscriminatory discharge, of an employee and its right to bargain concerning the age at which he is compelled to retire * * * [I]n either case, the effect upon the "conditions" of the person's employment is that the employment is terminated * * *
>
> * * * The tenure of employment is terminated just as effectively by a discharge for cause as by a dismissal occasioned by a retirement provision.

These cases in other Circuits stand squarely against the present decision, which substitutes the discretion of the Board for the requirements of the law itself.

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6. *See* J. I. Case Co. v. Labor Board, 321 U.S. 332, 335, in which this Court said that the bargaining contract extends to matters of "hiring and work and pay"; *cf.* Labor Board v. Dalton Tel. Co., 187 F.2d 811, cert. denied, 342 U.S. 824, in which the Fifth Circuit held an employer guilty of refusal to bargain where it insisted on a condition *not* embraced within the phrase "terms and conditions of employment."

4. The Question Is Important and Should Be Settled by This Court

A. THE QUESTION IS IMPORTANT TO THE ADMINISTRATION OF THE NATIONAL LABOR RELATIONS ACT, FOR THE DECISION BELOW EXTENDS THE BARGAINING DUTY TO EMBRACE NOVEL AND UNUSUAL SUBJECTS WHICH CONGRESS CANNOT HAVE INTENDED TO BE MATTERS OF COMPULSORY BARGAINING.

There was no known practice in American industrial relations at the time the National Labor Relations Act was passed of collective bargaining on the purchase by employees of corporate stock of the employer.[7] There is no precedent in Board or Court decisions for requiring it. The decision in this case carries the duty to bargain into an entirely new field, that of purchase by employees of the business ownership of their employer.

The Board and the Court hold that the Richfield investment plan and the union proposals concerning the subject would provide a special privilege for employees respecting acquisition of Richfield shares, which constitutes an "emolument of value" attached to the employment status, and is therefore both a wage and a condition of employment. But the Act does not require bargaining over every right, privilege or emolument of value which the proposal of one party or the other would annex to the employment status. For example, it does not require bargaining over a union proposal that employees in the bargaining unit be given a preferred right to fill vacancies in supervisory positions, *Labor Board v. Retail Clerk's Int'l Ass'n*, 203 F.2d 165, 211 F.2d 759, cert. denied 348 U.S. 839, nor concerning the right to occupy company-owned housing where the right is not an integral part of the employment relationship, *Labor Board v. Bemis Bros. Bag Co.*, 206 F.2d 33. Both Board and Courts have held that an employer may properly and lawfully engage in various activities and make numerous decisions which directly and substantially affect

7. This Court has indicated that the statutes relating to collective bargaining were intended to embody the practices existing at the times of their enactment. *See* Telegraphers v. Ry. Express Agency, 321 U.S. 342, 346; H. J. Heinz Co. v. Labor Board, 311 U.S. 514, 524-25.

the interests of employees and yet need not bargain concerning them. Thus, it has been held that an employer may discontinue or reduce operations, change its plant locations, alter plant arrangements and construction, and control purchasing methods and costs, selling practices and prices, all without obligation to meet concerning the same with a representative chosen under the Act. *Union Drawn Steel Co. v. Labor Board*, 109 F.2d 587, 592.

The decision here conflicts with the settled rule of decisions that the area of compulsory bargaining is defined by law, and goes only to those matters which enter into the employment contract as pay, wages, working conditions or conditions of employment. Supra, pp. 9-11. The Board assumed the authority to set aside the statutory definition of bargaining and employee representation and to substitute therefor its own view, making employee benefits and employee interest the test of the obligation to bargain. The Court, although it refers to the question whether the stock purchase plan amounts in law to "wages" or "conditions of employment", to some of the authorities cited above, and to its function on review, has in effect refused to decide the question for itself, saying (Tr. 166):

> To the Board has been left the determination as to what facts and circumstances spell out "wages" or what situations involve other "conditions of employment."

In the same vein, it said (Tr. 169):

> The very fact that Congress has not defined "wages" or "terms" or "other conditions of employment" makes it clear that the Board is to deal within its own competence and expertise with the multiple variance of differing aspects of the problems arising in these fields.

If employee interest or benefit is the sole test of the duty to bargain, its only limitation is what the employees or their agent propose; for who is better qualified to determine what is in the

interest of employees? As said in 43 Geo. L. Rev. 309, 310, commenting on the Board's decision:

> Thus it would seem that *now the definition of wages and conditions of employment is not just a broad one, but an all-inclusive one.* This seems to indicate that whatever the employee receives from the company upon which a value can be attached, will be considered a "wage" or "condition of employment".

It is submitted, however, that the definition of the bargaining duty in the Act, § 8(d), and the definition of the authority of collective bargaining representatives, § 9(a), do have meaning which it is the ultimate function of the courts to determine.

One purpose of Congress in adopting the National Labor Relations Act was to promote collective bargaining as an instrument to promote industrial peace, and to that end to protect workers in the choice of representatives to negotiate the terms and conditions of their employment. § 1, Appendix A, p. 1, Section 9(a) confers on such representatives the exclusive right to represent employees "* * * in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *" The subject-matter of the duty to bargain is further defined by § 8(d) in terms of "wages, hours and other terms and conditions of employment." These words are "terms of ordinary speech and mean what they mean in ordinary intercourse * * *", cf. *Western Union v. Lenroot*, 323 U.S. 490, 503, and their interpretation is for the courts, not the Board. Cf. *Social Security Board v. Nierotko*, 327 U.S. 358 ("wages"); *Addison v. Holly Hill Co.*, 322 U.S. 607.

Stock purchases and stock ownership are the very antithesis of wages or employment terms. The former, as in the instance of Richfield's plan, is the joining with the employer in an investment, with the prospect of profit, and the risk of loss. The investments by employees for stock purchases are from their earnings already payable and (although made for convenience as payroll deduc-

tions) are the equivalent of direct payments from the funds of the participants. If any employee discontinues his membership in the plan before his employment ends, he receives the shares bought for him by the trustee, and, so far as he is concerned, the matter is simply an investment of his own money. Even if he continues to participate throughout his employment and thus receives shares purchased with company funds, the result of the stock venture cannot be known until participation ends and the resulting stock ownership is liquidated. The profit, if any, results not from labor performed but from the success of the company's business enterprise and its effect on stock values—in short, from capital investment.

Wages, payable without respect to profits or losses of the business, standing ahead of profits, diminishing profits as they increase, are the precise opposite of such profits. The extent of stock ownership to be acquired by an employee in a stock purchase plan, as illustrated by Richfield's, is measured solely by the amount of his contributions. In contrast to wages, his rights or profits will not be enhanced in the slightest degree by the length or character of his service with the employer.

The duty to bargain, if it exists, was derived from § 9(a), which is a grant of exclusive representation rights to agents chosen under the Act. This power of the bargaining representative to bind the employee groups, including nonconsenting minorities, depriving them of their right to act individually in their own interest, is a delegation of power of a legislative character. *Dillard v. Chesapeake & O. Ry. Co.*, 199 F.2d 948; *Steele v. Louisville & N. R. Co.*, 323 U.S. 192. And, if the power so conferred exists respecting plans to purchase employer ownership interests, the individual's right to do so is superseded, and the union bargaining may obligate unwilling employees to invest their funds as the collective agreement requires.

Such a grant of power will not be construed and applied loosely; such delegation of authority, even to a government agency, will be strictly interpreted. *Social Security Board v. Nierotko*, 327 U.S. 358, 369, 370; SUTHERLAND, STATUTORY CONSTRUCTION, § 6603 (3d ed. Horack 1943); *cf.* Nathanson, *Administrative Discretion in the Interpretation of Statutes*, 3 VAND. L. REV. 470 (1950).

The decision of the Court of Appeals is contrary to this settled rule, in construing words limited to wages and other employment conditions to reach into all matters which affect employees' business ownership and its acquisition; thereby invading the property right of employers in their business ownership and the freedom of employees to spend or invest their earnings as they wish.[8]

It is submitted that Congress cannot have intended the results which flow from the present decision. First, the result is to compel employees, including nonconsenting minorities, to be bound by the decision of their bargaining agent as to how they shall dispose of their own funds already earned and payable and which no more constitute "wages" than any other debt due the employee. Secondly, if stock purchase plans are a subject of bargaining—and either all are or none are, *cf. Inland Steel Co. v. Labor Board*, 170 F.2d 247, 249 (7th Cir.), cert. denied 336 U.S. 960—then employees may as much be compelled as be permitted to become investors in corporate stock. And finally, there is involved a taking of the ownership of employers upon terms established in the statutory bargaining process—at the very least, a restriction of the employer's freedom to hold or dispose of stock ownership at its own free will, a right protected by the Fifth Amendment.

B. THE QUESTION IS IMPORTANT TO LABOR-MANAGEMENT RELATIONS IN GENERAL, BECAUSE THE DECISION DEPRIVES EMPLOYERS OF LEGITIMATE RIGHTS PROTECTED BY THE NATIONAL LABOR RELATIONS ACT.

Section 1 of the Labor Management Relations Act of 1947 (App. A, p. 1) declares the purpose and policy of Congress

8. Hughes Tool Co. v. Labor Board, 147 F.2d 69, 74-75.

to protect the legitimate rights of employers and employees and to provide procedures to prevent interference by either with the legitimate rights of the other. It declares that the public interest requires employers, employees, and labor organizations to recognize one another's legitimate rights in their mutual relations.

The Act does not enumerate the legitimate rights of the employer. But, if the employer has any legitimate rights at all, they must include the right to the ownership of the employer's business and to dispose of the business by sale or otherwise at the sole discretion of the owner; and where the employer's business is conducted in corporate form, to impose on it the duty to bargain concerning acquisition of corporate shares is to make ownership a matter of joint union-management determination at the collective bargaining table.

The Board and the Court state that the bargaining here required does not involve control of the company, or the company's dividend, debt and financial policies (Tr. 131, 164-66). It is correct that direct demands for control and respecting management policies are yet to be made. But, the ownership of the employer's corporate stock represents the right to receive dividends and assets on liquidation, to select directors and trustees, and to amend and establish by-laws and other regulations governing the corporate business. And so, to bargain on acquisition of stock is to bargain for a share in *all* rights of the employer and its management control. It matters not (if it be true) that present issues affect only a relatively small portion of the ownership and control;[9] to be forced to bargain on the subject at all is to interfere with the right. The force of the decision is to bring the subject within the meaning and application of § 9(a), and thus compel bargaining without limit.

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9. Actually there is nothing to indicate that corporate control may not be at stake even when but a few shares are the subject of bargaining.

The very decision in this case directly requires bargaining on all of the ownership incidents of Richfield's capital shares, as may be seen from the provisions of the plan and the union's proposals.

The declared purpose of the plan is a closer association by employees in the company's business by the acquisition of shares of its common stock (Tr. 83). All contributions to the plan, both those of members and those of the company, are paid to a trustee to be used to purchase shares of the company's stock at maximum prices specified in the plan, and to credit them to members' accounts quarterly (Tr. 87). Provisions are included governing the disposition of cash and stock dividends for the account of the respective contributors. Rules are set down for voting of all stock in the trust, both that acquired with membership contributions and that purchased with company funds. The exercise or disposition of stock rights, options and warrants are governed by requirements of the plan (Tr. 88, 90, 95).

And, finally, adequate and explicit provisions are made to provide for delivery to members of the shares and money to which they are entitled upon termination of participation either by withdrawal or termination of employment (Tr. 90-91, 96-97).

Already, as the decision of the Court of Appeals shows (Tr. 158), the union has demanded of Richfield that the plan be amended to deprive the company of its right to terminate the plan at will, and to make it binding for the full term of the current collective bargaining agreement between the company and the union, and during strikes or lockouts, even after the collective bargaining agreement has ceased to be in effect. In addition, the union has already proposed changes in the voting rights of employees participating (Tr. 98, 112).

Indeed, the decision places no limit upon the scope of the proposals which the union may now or in the future make respecting stock acquisition by employees, or concerning the extent and

character of the stock purchase demands upon which the company must bargain.

The final effect will be the execution of an agreement concerning the future acquisition of voting shares of Richfield by its employees, the administration of which, including the right of employee stockholders in respect to their stock ownership, will be administered in their behalf by the union and it alone.

The legitimate rights which the company is thus compelled to submit to interference at the bargaining table, embracing as they do participation in the selection of company directors and trustees, control management and thereby the conduct of the company's operations and its supervision.

The 1947 amendment of the Act excluding supervisors from the collective bargaining obligations of the Act and relieving employers from the duty to consider them as employees subject to its terms (§ 2(3)) shows the attitude of Congress toward this subject. It was based on the fact that foremen are part of management, and management must be free from interference by organizations of rank and file employees. If control by employers of their management representatives (§ 2(11)) is protected, surely the act intended that corporate ownership, the source of all management authority, be likewise protected as a legitimate right. To hold that employer stock purchase plans are a subject for compulsory bargaining is, we submit, contrary to basic policies of the Act.[10]

Confirming the right of employers to be free of interference in business ownership and its management is the interpretation placed by the Board itself upon legitimate rights of labor organizations. Their legitimate rights have included immunity from employer bargaining interference, in internal affairs, organization, member-

10. There is ample authority that basic policies of the Act control the general duty to bargain. *National Maritime Union*, 78 N.L.R.B. 971, 981; *Penello v. International Union*, 88 F. Supp. 935, 937 (D.D.C.).

ship, or representation. Employers have been enjoined from asking unions for proof of freedom from communist taint, or for changes in organization to render unions subject to suit in the state courts, or for performance bonds, or for compliance with state law requiring licenses for employee representation activities, as improper interferences with the right of labor organizations to be free in their own organization and collective bargaining activities. *Amory Garment Co.*, 80 N.L.R.B. 182; *Benson Produce Co.*, 71 N.L.R.B. 888; *Jasper Blackburn Products Corp.*, 21 N.L.R.B. 1240; *I.B.S. Manufacturing Co.*, 96 N.L.R.B. 1263; *Standard Generator Service Co.*, 90 N.L.R.B. 790; See also *Cookeville Shirt Co.*, 79 N.L.R.B. 667; *Scripto Manufacturing Co.*, 36 N.L.R.B. 411. Will it be questioned that a company proposal to condition employment on reduced dues for union members would be an interference with union rights? Must it not be conceded then that it is a like interference to condition employment on employee stock ownership?

It is no answer to say that an employer may bargain without agreeing (cf. Tr. 131, 167n). The duty to bargain requires a sincere purpose to arrive at agreement, lacking which the Board will compel bargaining which will result in agreement. Furthermore, if the company must bargain on stock purchase plans, they become a legitimate matter for concerted action by employees to enforce demands sanctioned by the Act with the right to resort to economic force. If the matter is one for compulsory bargaining, the employer is denied the right to enter into individual stock sales with employees. If the matter is part of statutory bargaining, the company must on demand make it a matter of written agreement with the union, and one which it cannot terminate or alter except at the end of the contract term and after statutory notice and bargaining.

C. THE QUESTION IS OF VITAL IMPORTANCE TO ALL CORPORATE EMPLOYERS, AND TO THEIR SHAREHOLDERS AND EMPLOYEES, AS WELL AS TO LABOR ORGANIZATIONS.

The question, purely a federal one, is whether §§ 8(a), 8(d) and 9(a) of the National Labor Relations Act require employers to treat with representatives of their employees, rather than with the employees themselves, respecting an agreement for acquisition by employees of ownership interests in the employer's business.

The decision vitally affects the rights, obligations and interests of all corporate employers, indeed all employers,[11] corporate shareholders and managers; for all of them are now confronted for the first time with a duty to bargain in good faith respecting the sale and disposition of the very businesses which they own and manage.[12] The question is of great interest to labor organizations,

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11. If a union may bargain for ownership of stock of a corporate employer, there would be no reason why it should not also demand bargaining for part ownership of a business operated by a sole proprietor or a partnership.

12. Sobernheim and Brown, *Collective Bargaining on Stock Purchase Plans: What Price Employee Stock Ownership?*, 55 COL. L. REV. 1000 (1955), refers to stock purchase proposals of General Motors Corp. and Ford Motor Co., and to stock purchase plans of one sort or another established by the following corporations:

Abbott Laboratories, Inc.;
American Telephone & Telegraph Co.;
Arnold Constable & Co.;
Atlantic Refining Co.;
Bridgeport Brass Co.;
Chase-Manhattan Bank;
Chesapeake & Ohio R.R.;
Cities Service Co.;
Cluett-Peabody & Co.;
Continental Can Co.;
Continental Oil Co.;
Dayton Power & Light Co.;
Dow Chemical Co.;
Eastern Air Lines, Inc.;
Eastman-Kodak Co.;
E. R. Squibb & Sons;
Food Machinery & Chemical Corp.;
General Electric Co.;
General Foods Corp.;
Gulf Oil Corp.;
Humble Oil & Refining Co.;
Inland Steel Co.;
Jewel Tea Co.;
J. P. Stevens, Inc.;
Link-Belt Co.;
New York Central R.R.;
Pacific Coast Aggregates, Inc.;
Pitney-Bowes, Inc.;
Pittsburgh Plate Glass Co.;
Procter & Gamble;
Sears, Roebuck & Co.;
Sinclair Oil Corp.;
Socony-Vacuum Oil Co.;
Standard Oil Co. of California;
Standard Oil Co. of Indiana;
Standard Oil Co. of New Jersey;
Standard Oil Co. of Ohio;
Standard Vacuum Oil Co.;
Sun Oil Co.;
Texas Co.;
Thermoid Co.;
United Airlines, Inc.;
United Merchants and Manufacturers, Inc.;
Westinghouse Electric Corp.

who may become entitled to insist upon bargaining respecting such matters, and to exert the economic force of organized labor in support of ownership demands; and it is of vital concern and immediate interest to all American workers represented under the National Labor Relations Act, who for the first time may envisage employee stock acquisition as a protected subject of concerted activity, with a corresponding duty to bargain solely through their representative with employers seeking capital contributions by employees as conditions of employment.[13]

Although there is a suggestion in the Court of Appeals' opinion that a distinction may be found depending upon whether a particular stock purchase plan might result in union control of management (Tr. 164), its decision necessarily rests upon the legal basis that Richfield's stock purchase plan is a subject of required bargaining under the Act; for the duty to bargain exists only when the subject-matter in question falls within the definition in the Act, and that definition either includes all stock purchase plans or none, just as it was held in the *Inland Steel* case[14] that the same definition necessarily includes all pension plans or none at all.

And so the decision below stands for the proposition that every stock purchase plan is a subject for compulsory collective bargaining, whether it be proposed by employer or union, and whether the purpose of the proposal be to require stock ownership by employees, or to sell stock ownership to them.

The decision thus introduces into the collective bargaining procedure a new and very broad field of industrial controversy, which can only increase the area of industrial dispute and unrest which it was the express purpose of the Act[15] to minimize. The effect

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13. Several important corporations have already used employee stock purchase plans as a means of obtaining needed capital. Sobernheim and Brown, *supra*, 55 COL. L. REV. at 1003-04.

14. Inland Steel Co. v. Labor Board, 170 F.2d 247, cert. denied 336 U.S. 960.

15. § 1, Appendix A, p. 1, *infra*.

of the decision upon interstate commerce is therefore a matter of grave public concern.

Widespread public interest in the question presented to the Board and to the Court of Appeals is evidenced by many notes, comments and articles in current legal literature[16] as well as by items in the public press, both news and editorial, concerning the merits of the question and the effect of a decision upon industry and organized labor.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

GREGORY A. HARRISON
HOWARD J. FINN
MOSES LASKY
MARION B. PLANT
ALVIN J. ROCKWELL
DAVID GUNTERT
Attorneys for Petitioner.

BROBECK, PHLEGER & HARRISON
Of Counsel.

February 28, 1956.

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16. Sobernheim and Brown, *Collective Bargaining on Stock Purchase Plans: What Price Employee Stock Ownership?*, 55 COL. L. REV. 1000 (1955); Comment, *Employer's Refusal to Bargain Concerning Terms and Conditions of a Stock Purchase Plan Is an Unfair Labor Practice*, 43 GEO. L. J. 309 (1955); Comment, *Scope of Required Bargaining—Stock Purchase Plan*, 23 GEO. WASH. L. REV. 609 (1955); Comment, *Stock Purchase Plan as Subject of Compulsory Collective Bargaining*, 53 MICH. L. REV. 1003 (1955); Comment, *Refusal by Employer to Bargain Collectively Concerning Unilaterally Instituted Employee Stock Purchase Plan*, 30 N. Y. U. L. REV. 1130 (1955); Note, *The Duty to Bargain: Bargainable Issues*, 50 NW. U. L. REV. 279 (1955); Note, *Union Inroads Upon Management Through Collective Bargaining*, 29 ST. JOHN'S L. REV. 239 (1955); Comment, *Voluntary Employee Stock Purchase Plan Held a Proper Subject for Compulsory Collective Bargaining*, 41 VA. L. REV. 259 (1955).

(APPENDICES FOLLOW)

APPENDIX A

STATUTES INVOLVED

Labor Management Relations Act, June 23, 1947, c. 120, 61 Stat. 136, 29 U.S.C. §§ 141 *et seq.*:

> Section 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947".
>
> (b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which peopardize the public health, safety, or interest.
>
> It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

National Labor Relations Act, July 5, 1935, c. 372, 49 Stat. 449, June 23, 1947, c. 120, Title I, 61 Stat. 136, as amended, 29 U.S.C. §§ 151 *et seq.*:

> Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation

of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by pro-

tecting the exercise by workers of full freedom of association, self-orgainization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 2. When used in this Act—

* * * * * * *

(2) The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

* * * * * * *

(11) The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such

action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

* * * * * * *

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Section 8. (a) It shall be an unfair labor practice for an employer—

* * * * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a);

(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a);

* * * * * * *

(d) For the purpose of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract cover-

ing employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

* * * * * * *

Section 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

Section 14. (a) Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining. * * *

APPENDIX B

United States Court of Appeals
for the District of Columbia Circuit

No. 12483

Richfield Oil Corporation, Petitioner

v.

National Labor Relations Board, Respondent

On Petition for Review and on Cross-Petition for Enforcement of an Order of the National Labor Relations Board

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Decided January 16, 1956

Before WILBUR K. MILLER, BAZELON and DANAHER, Circuit Judges.

DANAHER, Circuit Judge: Petitioner "Richfield" asks us to review and set aside, and the Board seeks enforcement of, the Board's order issued against Richfield October 18, 1954. The Board had found that Richfield violated § 8(a)(5) and (1) of the National Labor Relations Act[1] by refusing to bargain with Oil Workers International Union, CIO, with respect to an employee stock purchase plan which the company had unilaterally put into effect as of July 1, 1953.

Richfield produces, refines and sells petroleum products in interstate and foreign commerce and employs about 5,000 employees. The company engages in collective bargaining with some 11 labor organizations. Since April 1945, and at all times material to the issue raised here, Oil Workers Union has been the exclusive

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[1]Act of July 5, 1935, 49 STAT. 452, as amended 1947, 61 STAT. 140, 29 U.S.C. § 158 (1952).

collective bargaining representative of about 2,000 production, construction and maintenance Richfield employees.

On April 14, 1953, Richfield announced to its employees a voluntary "Stock Purchase Plan" of the deferred distribution type. The Plan had not previously been discussed with the Oil Workers Union, although there was then in full force and effect a collective bargaining agreement with that Union. The latter thereupon wrote as of April 2, 1953, expressing its desire "to meet with the Richfield Oil Corporation for the purpose of negotiations on the proposed 'Stock Purchase Plan.' " Richfield declined such negotiations, insisted that the Plan had been "finally adopted" subject only to clearance with the Commissioner of Internal Revenue, but expressed willingness to meet with the Union "for the purpose of explaining the Plan." Meetings were accordingly held on May 7, 1953, and again on May 13, 1953, when the Union proposed certain modifications embodied in a "Plan" it submitted, purposed "to encourage employees to provide additional security for their retirement through systematic savings." The Union sought to establish the plan by *contract* to be ratified by the Union, to enlarge the group of eligibles, to protect Union members while in authorized leave status, to prescribe certain safeguards in the event of strike or lockout, to relate various types of "service" time to certain situations otherwise covered in the outstanding collective bargaining agreement, and in other respects to vary the Richfield plan. After Richfield flatly adivsed that it "did not consider the Stock Purchase Plan to be a proper subject of collective bargaining," the Union charged Richfield with unfair labor practices.

The complaint recited that "the Union requested the Respondent to bargain collectively with it in respect to the Respondent's unilaterally promulgated Stock Purchase Plan as exclusive bargaining representative" of the employees[2] in its unit, and Richfield's

[2]By December 1, 1953, 2,547 out of 3,318 eligible employees had become participants in the Plan, including 820 of the 1,340 eligibles represented by the Union.

refusal so to bargain. Unfair labor practices accordingly were alleged.

The facts were stipuated for the purposes of the hearing. Attached as exhibits were the exclusive bargaining agreement then in force,[3] certain amendments thereto, Richfield's announcement, the Plan, a retirement plan and a retirement annuity plan concluded by agreement in 1944, and various other documents or correspondence. The retirement plan benefits were provided by a group annuity contract, paid for by Richfield, and were in addition to those provided under an "Employees Group Insurance Plan" and by the Social Security Act. The retirement annuity plan for Richfield employees was paid for by joint contributions of Richfield and its employees, with participation optional with each eligible employee.

Adequate details of the Stock Purchase Plan can be gleaned from the findings, included in the Board's "Decision and Order."[4]

One member dissenting, the Board majority concluded on the record as a whole that the Plan represents a mandatory subject of collective bargaining. The opinion said, in part:

> "We think that a common sense, non technical view of the Plan, including its manifest purpose, its unmistakable emphasis upon the long term accumulation of stock for future needs rather than upon stock ownership as such, its requirement that participants be employees, and its provision for benefits which are related to the employees' length of service and amount of wages while participating, compels the conclusion that benefits accruing to employees thereunder

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[3]The agreement dealt in detail with many employment problems including transportation and travel time, holidays, vacations, sick leave, and leaves of absence. Under the heading "Benefits," we read: "This agreement shall in no wise affect the status of employees on whose behalf it is made with respect to benefits derived or to be derived by employees as a whole from membership in any group insurance, stock purchasing plans or pension funds."

[4]110 N.L.R.B. 356 (1954).

represent a part of the compensation or remuneration received by the employees for their labor, differing from their weekly wages only in form and time of payment."

The Board found that the term "wages" comprehends emoluments of value flowing from the employment relationship. In like manner, the Plan, in its objectives and in its operation, was said to affect "conditions of employment." On both predicates the Board overruled Richfield's contention that the Plan is not the subject of compulsory collective bargaining.

Richfield in its brief argues that "no employer can be compelled by law to provide for the acquisition of its own shares by its employees, and the law gives neither to the employer nor to a trade union any right to compel employees without their consent, to buy the corporate shares of their employer, however needy that employer may be." The Company has offered, of its own volition, a plan by which employees will be assisted by Richfield in the purchase of the latter's shares. No one, so far as we can see, has asserted that Richfield can be compelled by law to provide for the purchase of its shares. No one has sought to compel employees, without their consent, to buy Richfield's shares. As a matter of fact, employees who enter upon the Plan, under its terms, may even withdraw from the purchase program at any time. The Plan in its every aspect was conceived and formulated by Richfield itself. We are offered by the language quoted a strange interpretation of the issue as we see it, yet the statement finds counterpart in other arguments offered in the Richfield brief.

For example, "Richfield's plan is offered as something separate from the wage agreement, to afford (as the plan states), an opportunity for employees to invest in the Company's stock, and thereby to promote a close and continuing association with the Company's business. As analysis discloses, *the plan is nothing more than that,*" (emphasis added) we are told.